



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

JUN 30 2015

Mr. Virgil Holmes, Director  
Division of Water Resources, Management Section  
Delaware Department National Resources  
and Environmental Control  
89 Kings Highway  
Dover, Delaware 19901

Dear Mr. Holmes

I appreciate the opportunity to discuss the Delaware Department of Natural Resources and Environmental Control's (DNREC) follow up activities to address the recommendations included in the Delaware round 3 State Review Framework (SRF) report during our June 2, 2015 meeting. As you are aware, the SRF review identified several areas of concerns with DNREC's approach to addressing significant and/or long-term noncompliance with Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) permits and requirements associated with compliance and enforcement of the NPDES) program for the data and files reviewed by EPA.

The recent Environmental Protection Agency (EPA) Region III round 3 SRF review found that DNREC does not adequately address NPDES noncompliance in a timely and appropriate manner, nor does the program appropriately escalate enforcement responses to address significant violations and long-term, ongoing noncompliance. Two previous SRF reviews conducted in 2004/2008 included similar findings. To address some of the findings in the Round 2 SRF Review, DNREC revised the Department's Compliance and Enforcement Response Guidance.

The Interim Compliance and Enforcement Response Guidance (CERG), dated October 2012, sets forth general and program-specific guidelines for timely and appropriate state enforcement. The CERG is generally consistent with federal enforcement response policies and guidance. In Section II, General Department Practices, the CERG outlines DNREC's escalation protocols when responding to NPDES noncompliance. This section explicitly states that a verbal warning or a warning letter *"is generally not an appropriate enforcement response to the occurrence of noncompliance, and should not be used in lieu of a written notice alleging noncompliance (e.g., NOV, an order or a consent order.)..."*. In addition, Section VI, Enforcement Process, clearly describes acceptable enforcement response timeframes and states specifically, *"[f]or programs where federal timely and appropriate policy applies, actions should be initiated within specified times."* The CERG further states that "appropriate" means that the enforcement response adequately addresses all compliance issues and imposes an appropriate penalty. "Timely" means that the enforcement action is initiated within the period of time specified in the federal policy. DNREC NPDES program specific guidance located in Chapter Six, Section III, provides EPA's Significant Noncompliance (SNC) standards as well as pointing to timely and appropriate enforcement expectations as set forth in EPA's Enforcement Management System. EPA has determined that if the guidance in the CERG was consistently followed by DNREC's NPDES program

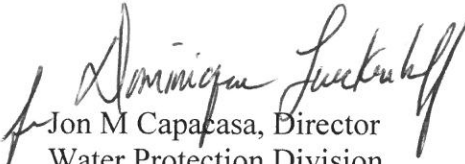
then the SRF finding with regard to DNREC's lack of timely and appropriate enforcement response would not have arisen.

In order to assist DNREC in application of its CERG, EPA will schedule regular monthly enforcement management calls with the DNREC NPDES Division of Water beginning July 14, 2015 and recurring every second Tuesday of the month for the next six months. The enforcement calls will be used to review DNREC NPDES compliance monitoring and enforcement activities, specifically, review of DNREC NPDES inspections conducted during the previous month, the proposed enforcement response and the status of any actions previously discussed with EPA. To ensure efficient use of our time, EPA would like to receive copies of inspections conducted during the previous 30 days and copies of proposed actions electronically on the Friday prior to the call.

EPA is also providing federal SNC and timely and appropriate guidance, and common data errors summary as previously requested by DNREC management. In addition, you will find examples of formal enforcement orders issued by the DNREC's Division of Air Quality as well as template models of formal federal enforcement orders to further inform the state's enforcement staff as to EPA's enforcement response expectations. Finally, EPA has identified a suggested best practice recommendation originating from the DNREC Division of Air Quality's use of DNREC's Enforcement Panel process to assess Notices of Violation or other informal enforcement responses for consideration of appropriateness and enforcement response escalation.

Once again, I would like to thank you for the productive meeting and your future cooperation. EPA Region III remains committed to assisting DNREC in the implementation of a vigorous NPDES compliance monitoring and enforcement program. Please feel free to contact me with any questions or concerns.

Sincerely,

  
for Jon M Capacasa, Director  
Water Protection Division

Enclosures

cc: Brian Ashby (DNREC)  
Jennifer Roushey (DNREC)  
Jennifer Bothall (DNREC)  
Jamie Rutherford (DNREC)